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Legal Background Briefings are prepared and updated periodically by the Legal Services Division of the Iowa Legislative Services Agency, a nonpartisan agency providing legislative drafting and research services to the committees and members of the Iowa General Assembly. The briefings provide background information regarding a particular area of law. Although a briefing may identify issues for consideration by the General Assembly, nothing contained in a briefing should be interpreted as advocating a particular course of action. The reader is cautioned against using information contained in a briefing to draw conclusions as to the legality of a particular behavior or set of circumstances.

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Legal Background Briefing on ...

Adult Mental Health and Disability Services Redesign — Service Delivery System and Funding

Overview

This briefing provides legal background information relating to the redesign of Iowa's publicly funded adult mental health and disability services (MH/DS) system. Except as otherwise indicated, references to the Iowa Code are to the 2016 Iowa Code.¹

Background

The overall purpose in providing publicly funded disability services to persons with disabilities² in Iowa is to make such services conveniently available on a reasonably uniform financial basis and to assure the continued high quality of those services. Such services must emphasize the ability of persons with disabilities to exercise their own choices about the services they receive; empower them to accept responsibility, exercise choices, and take risks; be individualized; and be provided in a manner which supports their ability to "live, learn, work, and recreate" in community-based settings.³

The Iowa General Assembly has specified the state's intent to improve the delivery of mental health services by implementing a comprehensive, continuous, and integrated state mental health plan. The Iowa Department of Human Services (DHS) is responsible for the development, funding, oversight, and ongoing leadership of mental health services in this state with the goals of making high-quality, evidence-based consumer and family-centered MH/DS and other supports available to consumers in the least restrictive, community-based setting.⁴

This statutorily stated legislative intent to implement a comprehensive state mental health plan and to provide support for persons with disabilities in the “least-restrictive, community-based setting,” if appropriate, reflects the legislature’s response to the “integration mandate” for all states set forth by the United States Supreme Court in *Olmstead v. L.C.* In *Olmstead*, the Court found that the unjustified segregation of people with disabilities in institutions constitutes discrimination under Title II of the Americans with Disabilities Act (ADA).⁵ Legislation in 2010 specified the need for the development of a comprehensive written five-year state MH/DS plan, to be updated on an annual basis, identifying the key components of the state’s MH/DS system including the services that are community-based, state institution-based, or regional or state-based.⁶ As a result, DHS, along with the Mental Health and Disability Services Commission, the Olmstead Consumer Taskforce, the Mental Health Planning Council, and other stakeholders worked together to develop the 2011-2015 Olmstead Plan for Mental Health and Disability Services which provides the vision and basic framework for the state in providing a “life in the community for everyone.”⁷

In accordance with *Olmstead* principles and with the goal of improving the availability, accessibility, consistency, and quality of mental health services for adults with disabilities in Iowa, the Iowa General Assembly, beginning in 2011, undertook the task of redesigning the adult MH/DS system by moving from a historically county-based services system to a regionally based services system.⁸

Regionalization

Legislative Vision. Senate File 525 from the 2011 Legislative Session provided the legislative groundwork for the redesign of Iowa’s county-based adult MH/DS system. The redesign plan proposed to shift the funding responsibility for the nonfederal share of adult MH/DS services paid for by Medicaid (including but not limited to all costs for the

state resource centers) from the counties to the state; to reorganize adult MH/DS services not paid for by the Medicaid program into a regionally based system instead of a county-based system with the goal of providing multiple points of access on a local level for adult MH/DS services regardless of how those services are funded; to utilize a person’s “residency” as the basis for financial responsibility for publicly funded disability services instead of a person’s “legal settlement”; and to meet the needs of those in need of MH/DS services in a responsive and cost-effective manner.⁹ The legislation required DHS to appoint and facilitate several workgroups to focus the redesign planning, including the Adult Mental Health System Redesign Workgroup, the Adult Intellectual and Developmental Disability System Redesign Workgroup, and the Regionalization Workgroup, in supporting the work of the Mental Health and Disability Services Interim Study Committee called for by the legislation.¹⁰

Framework. During the 2012 Legislative Session, the legislature established a more detailed framework for the provision of a regional MH/DS system. The framework was designed to develop and implement statewide standards, regional governance and management, and local access to certain MH/DS core services.¹¹

Structure/Criteria. The regional redesign framework requires each county in this state to participate in a DHS-approved regional MH/DS system made up of at least three contiguous counties, if workable, to increase the availability of MH/DS services for adults in need of such services. A county may be exempted from this requirement if the county meets the requisite compliance requirements and is able to provide the core services required by the legislation in a cost-effective manner and in a manner that is at least equal to what could have been provided to the county residents if the county had joined a region.¹² The Department of Human Services, along with the departments of Inspections and Appeals and Public Health, were directed to work together to improve

and streamline statewide regulatory requirements relating to the accreditation, certification, and licensing of MH/DS service system administration and service providers.¹³

As of November 1, 2015, 14 approved regions were operational, varying in size from one to 22 counties in each region, and serving populations in each region ranging from approximately 30,000 to 576,000 persons.¹⁴

Governance and Management. All counties in a region are required to enter into an Iowa Code chapter 28E agreement to address certain organizational, administrative, and financial requirements.¹⁵ The purpose of the 28E agreement is to form a regional administrator (an administrative office, organization, or entity formed by agreement between the counties in a region to function on behalf of the counties) to represent the counties in the region, under the control of a governing board.¹⁶ Governing board members must include at least one member of the board of supervisors in each county comprising the region or their designees, a consumer receiving MH/DS or a family member of a consumer receiving such services, and a service provider representative.¹⁷ A chief executive officer is appointed by the governing board.¹⁸ The regional administrator is required to enter into performance-based contracts with DHS to manage services paid for by the Medicaid program as well as services not paid for by the Medicaid program.¹⁹ Each region is required to develop and implement a regional service system management plan to be approved by the region's governing board and to be implemented by the regional administrator. The plan must contain a description of the mental health and disability services provided by the region, an annual budget plan (for non-Medicaid mental health and disability services for the fiscal period July 1 to June 30 of each year), a policies and procedures manual, and an annual report.²⁰ Regional advisory committees consisting of individuals who utilize services or who are actively involved relatives of such

individuals, service providers, governing board members, and persons representing other interests are also appointed to provide public input relating to MH/DS service issues.²¹

Dispute Resolution. Appeals from decisions involving a service authorization or other services-related decisions made by a regional administrator that cannot be resolved informally are heard in a contested case proceeding by a state administrative law judge, and the judge's decision is considered final agency action under Iowa Code chapter 17A.²² If a service authorization made by a regional administrator concerning a person varies from that of a mental health professional and the mental health professional believes that failure to provide the service could cause an immediate danger to the person's health or safety, the person may request an expedited review of the regional administrator's decision.²³ The expedited review is performed by a mental health professional who is either the administrator of the Division of Mental Health and Disability Services of the Department of Human Services or the administrator's designee. The decision of the administrator or designee is considered final agency action and is subject to judicial review.²⁴

Eligibility. Adult MH/DS service eligibility under the regional service system is determined based upon a person's age, income, and certain functional assessment guidelines. Basic financial eligibility for regional services for a person who meets other eligibility requirements is set at an income equal to or less than 150 percent of the federal poverty level, and those with a higher income may be eligible under certain circumstances. A person who is eligible for federally funded services is required to apply for the services. Other eligibility provisions require a person to be at least 18 years of age; be a resident of this state; have a diagnosis of an eligible condition; and have a functional assessment for individualized services.²⁵

Core Services. The legislature has specified certain initial core service “domains”²⁶ which regions must make available to eligible residents of a region with a diagnosis of a mental illness or an intellectual disability, subject to available funding and regardless of the funding source for the service (Medicaid-covered or third-party insurance). These initial core service domains include services in all of the following categories:²⁷

- Treatment (assessment and evaluation, mental health outpatient therapy, medication prescribing and management, mental health inpatient treatment)
- Basic crisis response (24/7 access, evaluation, personal emergency response system)
- Support for community living (home health aide, home and vehicle modification, respite, supportive community living)
- Support for employment (day habilitation, job development, supported employment, prevocational services)
- Recovery (family support, peer support)
- Service coordination (case management, health homes)

In addition, if money is available after funding the initial core service domains, regions must make the following additional core service domains available to eligible residents with a mental illness or an intellectual disability who are not eligible for Medicaid or who are not receiving other third-party payments for the services:²⁸

- Comprehensive facility and community-based crisis services (24-hour crisis hotline, mobile response, 23-hour crisis observation and holding, crisis stabilization facility and community-based services, crisis residential services)
- Subacute services provided in facility and community-based settings

- Justice system-involved service (jail diversion, crisis intervention training, civil commitment prescreening)
- Evidence-based treatment (positive behavior support, assertive community treatment, peer self-help drop-in centers)

A regional service system may provide funding for other additional appropriate services or other support if consistent with certain research-based practices and *Olmstead* principles.²⁹ A region is required to ensure that access is available to providers of core services that serve persons with co-occurring conditions utilizing evidence-based services and trauma-informed care.³⁰ In addition, it is the intent of the legislature to expand all core service domains to persons in need of developmental disability and brain injury services, subject to available funding.³¹

Funding. The adult MH/DS system redesign implemented a new funding system for counties to provide adult MH/DS non-Medicaid services. Redesign legislation created a new county levy authority specifically for adult MH/DS services, effective July 1, 2013, distributing funds collected through county property taxes on a per capita expenditure target amount for each county of \$47.28.³² The redesign legislation required counties with levies less than the expenditure target amount to receive a property tax equalization payment from the state to bring each of those counties up to the expenditure target amount.³³ The redesign legislation also shifted the responsibility for funding the nonfederal share responsibility of certain Medicaid-covered MH/DS services (the local match requirement) from the counties to the state, known as the “Medicaid county buyout.”³⁴ In addition, the expansion of persons eligible to receive Medicaid services under the Affordable Care Act, including the Iowa Health and Wellness Plan, includes MH/DS services previously paid for by the counties.

¹Redesign legislation also addressed children’s issues and other issues, but this briefing focuses only on the

redesign relating to the delivery of core services to the adult MH/DS population and the funding of those services. See 2012 Iowa Acts, ch. 1120.

² Although Iowa Code §225C.2 defines “disability services” as “services and other support available to a person with mental illness, an intellectual disability or other developmental disability, or brain injury,” the redesign focuses on the provision of certain core services by counties organized into regions to financially eligible persons with a mental illness or an intellectual disability, with the opportunity to serve additional MH/DS populations (persons with a developmental disability or brain injury) or to provide mental health and intellectual disability populations with expanded core services in a region, subject to the availability of funding.

³ Iowa Code §225C.1.

⁴ Iowa Code §225C.6B(1).

⁵ 527 U.S. 581, 597-598 (1999).

⁶ 2010 Iowa Acts, ch. 1031, §§377, 378, codified at Iowa Code §225C.6B(2).

⁷ DHS Executive Summary on the Olmstead Plan, available at <http://iowamhdsplan.org/wp-content/uploads/2011/02/ExecutiveSummary1-18-11.pdf> (last visited October 1, 2015). The Olmstead Plan is currently being revised and is scheduled to be completed by January 2016. The revision of the plan is in response to many changes in MH/DS delivery and funding efforts over the past five years, including the redesign, increasing costs of Medicaid services, and managed care considerations. Iowa Department of Human Services, Olmstead Planning (2016-2020) Discussion Draft, September 15, 2015 (on file with author).

⁸ 2011 Iowa Acts, ch. 121 (SF 525). Earlier MH/DS reform efforts laid the groundwork for reforming the adult MH/DS system prior to 2011. See John Pollak, Adult Mental Health and Disability Services Redesign—Historical Information, Legislative Services Agency, October 22, 2013, available at <https://www.legis.iowa.gov/docs/publications/IH/17015.pdf> (last visited October 1, 2015).

⁹ 2011 Iowa Acts, ch. 121 (SF 525).

¹⁰ 2011 Iowa Acts, ch. 121 (SF 525).

¹¹ 2012 Iowa Acts, ch. 1120, §28.

¹² Iowa Code §331.389(1), (3).

¹³ Iowa Code §225C.6C.

¹⁴ Prior to November 1, 2015, the Mid-Iowa Behavioral Health Region (made up of Marion and Mahaska counties) was provisionally operational. Effective November 1, 2015, Marion County joined the County Rural Offices of Social Services Region and Mahaska County joined the South Central Behavioral Health

Region. See Iowa Department of Human Services, Mental Health and Disability Services Commission Meeting Minutes, September 17, 2015, p. 3, available at https://dhs.iowa.gov/sites/default/files/MHDS-Comm-Mins-Sept-17-2015_0.pdf (last visited December 9, 2015). See also Iowa Department of Human Services, Mental Health and Disability Services Redesign, February 12, 2015, available at <https://www.legis.iowa.gov/docs/publications/SD/633328.pdf> (last visited November 30, 2015); Iowa Department of Human Services, Mental Health System Update, August 12, 2015, available at https://dhs.iowa.gov/sites/default/files/Mental_Health_System_Update.pdf (last visited November 30, 2015).

¹⁵ Iowa Code §331.392 (regional governance agreement requirements).

¹⁶ Iowa Code §331.388(4).

¹⁷ Iowa Code §331.390.

¹⁸ Iowa Code §331.392(3).

¹⁹ Iowa Code §331.390.

²⁰ Iowa Code §331.393.

²¹ Iowa Code §331.392(2)(i).

²² Iowa Code §331.394(2).

²³ Iowa Code §331.394(3).

²⁴ Iowa Code §331.394(3).

²⁵ Iowa Code §§331.395 and 331.396(1)(b-e).

²⁶ “Domain” is defined to mean a set of similar services that can be provided based upon a person’s service needs. Iowa Code §331.397(1).

²⁷ Iowa Code §331.397(2), (4).

²⁸ Iowa Code §331.397(6).

²⁹ Iowa Code §331.397(7).

³⁰ Iowa Code §331.397(5).

³¹ Iowa Code §331.397(2)(c).

³² Iowa Code §§331.424A and 426B.3(2).

³³ Iowa Code §426B.3(4). The most recent redesign equalization appropriation occurred in 2013. See 2013 Iowa Acts, ch. 140, §180 (SF 452).

³⁴ 2016 Iowa Code §426B.3(5). The required county repayment of Medicaid offset amounts to the state was eliminated, effective July 1, 2015. 2015 Iowa Acts, ch. 137, §97 (SF 505). For a more detailed history relating to the history of funding sources of the adult MH/DS in Iowa, as well as funding relating to the MH/DS redesign, see Iowa Legislative Services Agency, Fiscal Services, Issue Review: Funding for the Adult Disability Services System (County Mental Health and Disability Services Funding), January 24, 2014, available at

<https://www.legis.iowa.gov/docs/publications/IR/24647.pdf> (last visited November 30, 2015).

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